

ASSEMBLY BILL

No. 241

Introduced by Assembly Member Harman

February 7, 2005

An act to amend Section 1107.5 of, and to add Sections 6020.5, 8020.5, 12550.5, 15678.10, 16915.5, and 17554.5 to, the Corporations Code, relating to business entities.

LEGISLATIVE COUNSEL'S DIGEST

AB 241, as introduced, Harman. Mergers: certificate of satisfaction.

Existing law requires that the surviving corporation of a corporate merger assume the liability of the domestic disappearing corporation for specified tax obligations and allows the Secretary of State to file the merger without a certificate of satisfaction from the Franchise Tax Board, if the surviving corporation is a domestic corporation or a foreign corporation qualified to do business in this state.

This bill would specify that upon a merger, the surviving domestic or foreign corporation or other business entity would be subject to the tax liability, as specified, of the disappearing entity. The bill would extend the Secretary of State's authority to file the merger without a certificate of satisfaction from the Franchise Tax Board if the surviving entity is a domestic limited liability company or domestic registered limited liability partnership or a foreign limited liability company or foreign limited liability partnership that is registered or qualified to do business in this state.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1107.5 of the Corporations Code is amended to read:

1107.5. (a) Upon merger pursuant to this chapter, a *domestic or foreign surviving corporation or other business entity* shall ~~assume~~ *be subject to the liability of a each domestic or foreign disappearing corporation—(1) to or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:*

(1) *To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of the domestic that disappearing corporation under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to entity as specified in subparagraphs (A) to (D), inclusive.*

(A) *For a disappearing domestic or foreign limited partnership, the preparation and filing shall be made pursuant to Chapter 10.5 (commencing with Section 17935) of Part 10 of Division 2 of the Revenue and Taxation Code.*

(B) *For a disappearing domestic or foreign limited liability company, the preparation and filing shall be made pursuant to Chapter 10.6 (commencing with Section 17941) of Part 10 of Division 2 of the Revenue and Taxation Code.*

(C) *For a disappearing registered or foreign limited liability partnership, the preparation and filing shall be made pursuant to Chapter 10.7 (commencing with Section 17948) of Part 10 of Division 2 of the Revenue and Taxation Code.*

(D) *For a disappearing domestic or foreign corporation, the preparation and filing shall be made pursuant to Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.*

(2) *To pay any tax liability determined to be due.*

(b) *Notwithstanding Sections 1103, 1108, and 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Section Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving—corporation entity is a domestic limited liability company, domestic corporation, or domestic registered limited*

1 *liability partnership* or a foreign *limited liability company*,
2 *foreign limited liability partnership*, or *foreign corporation that is*
3 *registered* or qualified to do business in California, the Secretary
4 of State shall file the merger without the certificate of satisfaction
5 of the Franchise Tax Board and shall notify the Franchise Tax
6 Board of the merger.

7 SEC. 2. Section 6020.5 is added to the Corporations Code, to
8 read:

9 6020.5. (a) Upon merger pursuant to this chapter, a domestic
10 or foreign surviving corporation or other business entity shall be
11 subject to the liability of each domestic or foreign disappearing
12 corporation or other business entity that is taxed under Part 10
13 (commencing with Section 17001) of, or under Part 11
14 (commencing with Section 23001) of, Division 2 of the Revenue
15 and Taxation Code for the following:

16 (1) To prepare and file, or to cause to be prepared and filed,
17 tax and information returns otherwise required of that
18 disappearing entity as specified in subparagraphs (A) to (D)
19 inclusive.

20 (A) For a disappearing domestic or foreign limited
21 partnership, the preparation and filing shall be made pursuant to
22 Chapter 10.5 (commencing with Section 17935) of Part 10 of
23 Division 2 of the Revenue and Taxation Code.

24 (B) For a disappearing domestic or foreign limited liability
25 company, the preparation and filing shall be made pursuant to
26 Chapter 10.6 (commencing with Section 17941) of Part 10 of
27 Division 2 of the Revenue and Taxation Code.

28 (C) For a disappearing registered or foreign limited liability
29 partnership, the preparation and filing shall be made pursuant to
30 Chapter 10.7 (commencing with Section 17948) of Part 10 of
31 Division 2 of the Revenue and Taxation Code.

32 (D) For a disappearing domestic or foreign corporation, the
33 preparation and filing shall be made pursuant to Part 11
34 (commencing with Section 23001) of Division 2 of the Revenue
35 and Taxation Code.

36 (2) To pay any tax liability determined to be due.

37 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
38 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
39 15678.4, and 17552 of this code and Sections 17945, 17948.1,
40 and 23334 of the Revenue and Taxation Code, if the surviving

entity is a domestic limited liability company, domestic corporation, or domestic registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 3. Section 8020.5 is added to the Corporations Code, to read:

8020.5. (a) Upon merger pursuant to this chapter, a domestic or foreign surviving corporation or other business entity shall be subject to the liability of each domestic or foreign disappearing corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in subparagraphs (A) to (D) inclusive.

(A) For a disappearing domestic or foreign limited partnership, the preparation and filing shall be made pursuant to Chapter 10.5 (commencing with Section 17935) of Part 10 of Division 2 of the Revenue and Taxation Code.

(B) For a disappearing domestic or foreign limited liability company, the preparation and filing shall be made pursuant to Chapter 10.6 (commencing with Section 17941) of Part 10 of Division 2 of the Revenue and Taxation Code.

(C) For a disappearing registered or foreign limited liability partnership, the preparation and filing shall be made pursuant to Chapter 10.7 (commencing with Section 17948) of Part 10 of Division 2 of the Revenue and Taxation Code.

(D) For a disappearing domestic or foreign corporation, the preparation and filing shall be made pursuant to Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Sections 17945, 17948.1,

1 and 23334 of the Revenue and Taxation Code, if the surviving
2 entity is a domestic limited liability company, domestic
3 corporation, or domestic registered limited liability partnership or
4 a foreign limited liability company, foreign limited liability
5 partnership, or foreign corporation that is registered or qualified
6 to do business in California, the Secretary of State shall file the
7 merger without the certificate of satisfaction of the Franchise Tax
8 Board and shall notify the Franchise Tax Board of the merger.

9 SEC. 4. Section 12550.5 is added to the Corporations Code, to
10 read:

11 12550.5. (a) Upon merger pursuant to this chapter, a
12 domestic or foreign surviving corporation or other business entity
13 shall be subject to the liability of each domestic or foreign
14 disappearing corporation or other business entity that is taxed
15 under Part 10 (commencing with Section 17001) of, or under Part
16 11 (commencing with Section 23001) of, Division 2 of the
17 Revenue and Taxation Code for the following:

18 (1) To prepare and file, or to cause to be prepared and filed,
19 tax and information returns otherwise required of that
20 disappearing entity as specified in subparagraphs (A) to (D)
21 inclusive.

22 (A) For a disappearing domestic or foreign limited
23 partnership, the preparation and filing shall be made pursuant to
24 Chapter 10.5 (commencing with Section 17935) of Part 10 of
25 Division 2 of the Revenue and Taxation Code.

26 (B) For a disappearing domestic or foreign limited liability
27 company, the preparation and filing shall be made pursuant to
28 Chapter 10.6 (commencing with Section 17941) of Part 10 of
29 Division 2 of the Revenue and Taxation Code.

30 (C) For a disappearing registered or foreign limited liability
31 partnership, the preparation and filing shall be made pursuant to
32 Chapter 10.7 (commencing with Section 17948) of Part 10 of
33 Division 2 of the Revenue and Taxation Code.

34 (D) For a disappearing domestic or foreign corporation, the
35 preparation and filing shall be made pursuant to Part 11
36 (commencing with Section 23001) of Division 2 of the Revenue
37 and Taxation Code.

38 (2) To pay any tax liability determined to be due.

39 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
40 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,

1 15678.4, and 17552 of this code and Sections 17945, 17948.1,
2 and 23334 of the Revenue and Taxation Code, if the surviving
3 entity is a domestic limited liability company, domestic
4 corporation, or domestic registered limited liability partnership or
5 a foreign limited liability company, foreign limited liability
6 partnership, or foreign corporation that is registered or qualified
7 to do business in California, the Secretary of State shall file the
8 merger without the certificate of satisfaction of the Franchise Tax
9 Board and shall notify the Franchise Tax Board of the merger.

10 SEC. 5. Section 15678.10 is added to the Corporations Code,
11 to read:

12 15678.10. (a) Upon merger pursuant to this article, a
13 surviving limited partnership or other business entity shall be
14 subject to the liability of each disappearing limited partnership or
15 other business entity that is taxed under Part 10 (commencing
16 with Section 17001) of, or under Part 11 (commencing with
17 Section 23001) of, Division 2 of the Revenue and Taxation Code
18 for the following:

19 (1) To prepare and file, or to cause to be prepared and filed,
20 tax and information returns otherwise required of that
21 disappearing entity as specified in subparagraphs (A) to (D)
22 inclusive.

23 (A) For a disappearing domestic or foreign limited
24 partnership, the preparation and filing shall be made pursuant to
25 Chapter 10.5 (commencing with Section 17935) of Part 10 of
26 Division 2 of the Revenue and Taxation Code.

27 (B) For a disappearing domestic or foreign limited liability
28 company, the preparation and filing shall be made pursuant to
29 Chapter 10.6 (commencing with Section 17941) of Part 10 of
30 Division 2 of the Revenue and Taxation Code.

31 (C) For a disappearing registered or foreign limited liability
32 partnership, the preparation and filing shall be made pursuant to
33 Chapter 10.7 (commencing with Section 17948) of Part 10 of
34 Division 2 of the Revenue and Taxation Code.

35 (D) For a disappearing domestic or foreign corporation, the
36 preparation and filing shall be made pursuant to Part 11
37 (commencing with Section 23001) of Division 2 of the Revenue
38 and Taxation Code.

39 (2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or domestic registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 6. Section 16915.5 is added to the Corporations Code, to read:

16915.5. (a) Upon merger pursuant to this article, a surviving partnership or other business entity shall be subject to the liability of each disappearing partnership or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in subparagraphs (A) to (D) inclusive.

(A) For a disappearing domestic or foreign limited partnership, the preparation and filing shall be made pursuant to Chapter 10.5 (commencing with Section 17935) of Part 10 of Division 2 of the Revenue and Taxation Code.

(B) For a disappearing domestic or foreign limited liability company, the preparation and filing shall be made pursuant to Chapter 10.6 (commencing with Section 17941) of Part 10 of Division 2 of the Revenue and Taxation Code.

(C) For a disappearing registered or foreign limited liability partnership, the preparation and filing shall be made pursuant to Chapter 10.7 (commencing with Section 17948) of Part 10 of Division 2 of the Revenue and Taxation Code.

(D) For a disappearing domestic or foreign corporation, the preparation and filing shall be made pursuant to Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or domestic registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 7. Section 17554.5 is added to the Corporations Code, to read:

17554.5. (a) Upon merger pursuant to this chapter, a surviving limited liability company or other business entity shall be subject to the liability of each disappearing limited liability company or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in subparagraphs (A) to (D), inclusive.

(A) For a disappearing domestic or foreign limited liability partnership, the preparation and filing shall be made pursuant to Chapter 10.5 (commencing with Section 17935) of Part 10 of Division 2 of the Revenue and Taxation Code.

(B) For a disappearing domestic or foreign limited liability company, the preparation and filing shall be made pursuant to Chapter 10.6 (commencing with Section 17941) of Part 10 of Division 2 of the Revenue and Taxation Code.

(C) For a disappearing registered or foreign limited liability partnership, the preparation and filing shall be made pursuant to Chapter 10.7 (commencing with Section 17948) of Part 10 of Division 2 of the Revenue and Taxation Code.

(D) For a disappearing domestic or foreign corporation, the preparation and filing shall be made pursuant to Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

1 (2) To pay any tax liability determined to be due.

2 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
3 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
4 15678.4, and 17552 of this code and Sections 17945, 17948.1,
5 and 23334 of the Revenue and Taxation Code, if the surviving
6 entity is a domestic limited liability company, domestic
7 corporation, or domestic registered limited liability partnership or
8 a foreign limited liability company, foreign limited liability
9 partnership, or foreign corporation that is registered or qualified
10 to do business in California, the Secretary of State shall file the
11 merger without the certificate of satisfaction of the Franchise Tax
12 Board and shall notify the Franchise Tax Board of the merger.

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